

## **SOUTH & CITY COLLEGE BIRMINGHAM**

# **PUBLIC INTEREST DISCLOSURE POLICY AND PROCEDURE “WHISTLEBLOWING”**

### **POLICY**

#### **1. Introduction**

- 1.1 South & City College Birmingham wishes to promote a culture of openness, honesty and integrity. The Board of Governors seeks to ensure that the affairs of the College are conducted with probity, within which all workers are encouraged to act responsibly and where malpractice is not tolerated.
- 1.2 Members of staff are often the first to realise that there may be something seriously wrong within the college. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to their employer. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.3 The College encourages all employees, agency contract workers or self-employed home workers employed or engaged by the College or students at the College including apprentices, and who have grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the College (whether on the part of another employee, a member of the Corporation, or any other person or persons, (“the Discloser”) to raise genuine concerns about malpractice at the earliest practicable stage rather than wait for proof. Malpractice within the College is taken very seriously.
- 1.4 The accompanying procedure is, intended to provide safeguards for Disclosers to raise concerns about malpractice in connection with the College. The aim is to provide a rapid mechanism under which genuine concerns can be raised internally, and, if necessary, externally without fear of adverse repercussions to the individual.
- 1.5 The availability of the disclosure procedure seeks to balance the need to provide safeguards for those who raise genuine concerns about malpractice against the need to protect other members of staff, members of the Corporation, students and the College against uninformed or vexatious allegations which can cause serious difficulty to innocent individuals.
- 1.6 The procedure is not for the resolution of personal grievances which should be raised through the College Grievance Procedure. Legitimate concerns should be raised if they are in the interests of the College, staff, students or the public, and must not be raised in the furtherance of any private dispute.

1.7 This policy and procedure ensures compliance with the Bribery Act 2010.

## **2. Public Interest Test**

2.1 “In” the public interest must be distinguished from “of” the public interest, i.e. matters which are simply interesting to the public.

2.2 Disclosure under Act will not be protected by the Act unless they are believed to be made in the public interest. This therefore excludes disclosures which are of a purely personal interest.

2.3 Grievances by individuals in relation to their personal employment or as appeals against decisions of management unless they involve instances of malpractice are regarded as personal interest and shall be dealt with under the appropriate procedure.

## **3. Confidentiality**

3.1 Confidentiality will be maintained so far as is reasonably possible but there may be circumstances where the identity of a whistleblower would need to be revealed in order to receive protection under the Public Interest Disclosure Act.

3.2 The policy recognises that accusations made anonymously are difficult to follow-up or substantiate but still require a reasonable investigation. The Public Interest Disclosure Act offers protection but it must be understood that in dealing properly and effectively with whistleblowing, it would be unlikely that anonymity could be retained.

## **4. Malpractice**

4.1 The types of matters regarded as “malpractice” for the purposes of this procedure are as follows: -

4.1.1 Fraud or financial irregularity

4.1.2 Corruption, bribery or blackmail

4.1.3 Criminal offences

4.1.4 Failure to comply with a legal or regulatory obligation

4.1.5 Miscarriage of justice

4.1.6 Endangering the health or safety of any individual

4.1.7 Endangering the environment

4.1.8 Improper use of authority

4.1.9 Serious financial maladministration arising from the deliberate commission of improper conduct.

## PROCEDURE

- 1.1 Where possible the concerned worker (the Discloser) should in the first instance, in complete confidence, discuss the issue of concern with his/her line manager.
- 1.2 Where the Discloser prefers not to discuss the matter with the line manager, s/he should contact a Designated Assessor.

### 2. Designated Assessors

- 2.1 The Principal of the College has designated five people who have appropriate experience and standing within the College and for the purposes of this procedure are designated assessors ("Designated Assessors") and that one of the members has been designated as lead designated assessor ("the Lead Assessor"). At the date of the adoption of this procedure the Designated Assessors will be: -

**Lead Designated Assessor** – Sardul Dhesi, Deputy Principal

**second Designated Assessor** – Parveen Ghulam, Clerk to the Corporation, Assistant Director of Legal Services.

**third Designated Assessor** – Clive Henderson, Chair to the Corporation.

**fourth Designated Assessor** – John Gemmell, Chair of Audit Committee

**fifth Designated Assessor** – Lucy Jeynes, Vice Chair of the Corporation

- 2.2 The Governors may revoke any such designation from time to time and appoint new Designated Assessors. Any such revocation will be reported to the next meeting of the Corporation, together with brief reasons for the revocation. Where a revocation arises from the termination of a Designated Assessor's employment (whether by the College or by the officer) brief reasons for the termination will be given to the Corporation.
- 2.3 The Lead Assessor will co-ordinate the training of the Designated Assessors in the use of this procedure and will ensure that the Audit Committee through the Annual Report to the Principal and the Corporation reports the number of occasions when this procedure has been formally invoked and their outcome.

### **3. Disclosure**

- 3.1 The Discloser should as soon as practicable disclose in confidence the grounds for the belief of malpractice to one of the Designated Assessors, in doing so the Discloser must have reasonable grounds to believe that the information disclosed indicates malpractice. The choice of Designated Assessor will be for the Discloser, but a Designated Assessor may decline to become involved on reasonable grounds, including possible previous involvement or interest in the matter concerned, incapacity or unavailability or if a Designated Assessor is satisfied, after consulting the lead Assessor, that some other Designated Assessor would be more appropriate to consider the matter in accordance with this procedure.
- 3.2 Workers must declare any personal interest they may have in making a disclosure.
- 3.3 Any disclosure to a Designated Assessor under this procedure shall, wherever possible, be in writing, but, if this is not practicable, any such disclosure may be oral, at the choice of the Discloser. The Discloser should provide as much supporting written evidence as possible about the disclosure and the grounds for the belief of malpractice.

### **4 First Steps**

- 4.1 On receipt of the disclosure, the Designated Assessor, will send a written acknowledgement to the Discloser within 5 working days.
- 4.2 The Designated Assessor will offer to interview the Discloser in confidence, such interview to take place as soon as practicable after the initial disclosure. The purpose of the interview will be for the Designated Assessor to obtain as much information as possible from the Discloser about further steps which could be taken and will ensure that the Discloser is aware of the public interest test and the protection offered by the Public Interest Disclosure Act.
- 4.3 The Discloser may be accompanied by a local trade union representative or work colleague at the interview.
- 4.4 The Designated Assessor may be accompanied by an administrative assistant to take notes, which will not identify the Discloser. For safeguards in relation to confidentiality, see section 7.
- 4.5 Following the interview, if the Designated Assessor considers that the disclosure does not have sufficient merit to warrant further action, then the person making the disclosure will be notified in writing of the reasons and will also be advised that no further action will be taken by the College. In making this decision, consideration will take account of the following:
  - 4.5.1 that the Designated Assessor is satisfied that the Discloser does not have a reasonable belief that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur; or
  - 4.5.2 that the matter concerned is already the subject of legal proceedings, or has already been referred to the police, the Education Skills Funding Agency

(ESFA), the Department for Business Innovation & Skills (BIS) or other public authority; or

5.4.5 that the matter is already (or has already been) the subject of proceedings under one of the College's other procedures relating to staff or students.

## **5. Further Steps**

5.1 As soon as practicable after the interview (or after the initial disclosure if no interview takes place) the Designated Assessor will recommend what further steps should be taken. Such recommendations may (without limitation) include one or more of the following:-

5.1.1 that the matter should be reported to the police;

5.1.2 that the matter should be reported to relevant external bodies such as (not an exhaustive list), the police, the Education Skills Funding Agency (ESFA), the Department for Education, Business and Skills (BIS), Education Funding Agency (EFA), or other appropriate public authority;

5.1.3 that the matter should be investigated either internally by the College or by the Audit Committee or some other committee of the Corporation and/or by external or internal auditors or investigators appointed by the College;

5.1.4 that a member of staff or a student should be given the opportunity to seek redress through the College's grievance or complaints procedures or through an appeal under the College's disciplinary procedures relating to staff or students;

5.2 It is the responsibility of the Assessor to keep the worker making the disclosure informed, on a timely basis, of any progress as a result of the initial disclosure and this should be done normally every five working days.

5.3 Any recommendations made under this procedure will be made by the Designated Assessor to the Principal unless it is alleged that the Principal is involved in the alleged malpractice or unless there are other reasonable grounds for not doing so, in which case the recommendations will be made to the Chair or the Vice-Chair of the Corporation. In any case the recommendations will be made without revealing the identity of the Discloser save as provided in paragraph 7.1 below. The recipient of the recommendations will take all steps within his or her power to ensure that they are implemented except to the extent that in view of the recipient there are good reasons for not doing so. If the Principal decides not to implement fully any such recommendations that the decision will be notified in writing to the Chair of the Corporation as soon as practicable, together with the reasons for it.

5.4 Once the Principal (or other recipient) has decided what further steps (if any) should be taken, the Designated Assessor will inform the Discloser of the decision. If no further steps by the College are proposed, the Designated Assessor will give the reasons for this.

5.5 All steps taken will be taken immediately and the procedure should be implemented within 10 working days of notification of disclosure.

5.5 Upon completion of the investigation the matter shall be reported to the next ordinary meeting of the Audit Committee.

5.7 If the disclosure is anonymous, reasonable endeavour shall be made to investigate within the limited confines of the disclosure as appropriate. A report will be submitted to the Audit Committee on the outcome of such an investigation.

## **6. External Disclosure**

6.1 If, having followed this procedure, the Discloser is not satisfied with the further steps (if any) decided upon or the outcome of any such steps, the Discloser may raise the matter concerned on a confidential basis directly with the police, the ESFA, the BIS, or other appropriate public authority. Before taking any such action, the Discloser will inform the Designated Assessor.

6.2 The Discloser may also raise the matter in accordance with clause 6.1 above if the Discloser has reasonable grounds for believing that all of the available Designated Assessors are or were involved in the alleged malpractice or that the Discloser will be prejudiced as a result of making the disclosure.

6.3 The Discloser may at any time disclose the matter on a confidential basis to a professionally qualified lawyer for the purpose of taking legal advice.

6.4 Should advice be sought outside of the College, the worker making the disclosure must be careful not to breach any confidentiality obligations or damage the College's reputation in so doing.

## **7. Safeguards**

7.1 Any report or recommendations by the Designated Assessor in relation to the matter will not identify the Discloser, unless the Discloser otherwise consents in writing or unless there are grounds to believe that the Discloser has acted maliciously. In the absence of such consent or grounds, the Designated Assessor will not reveal the identity of the individual as the Discloser of information under this procedure except:

7.1.1 where the Designated Assessor is under a legal obligation to do; or

7.1.2 where the information is already in the public domain; or

7.1.3 on a strictly confidential basis to the Designated Assessor's administrative assistant for the time being; or

7.1.4 on a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.

7.2 Any documentation (including computer files and discs) kept by the Designated Assessor relating to the matter will be kept secure, so that as far as practicable only the Designated Assessor and his or her administrative assistant shall have access to it. As far as practicable, any documentation prepared by the Designated Assessor will not reveal the identity of the individual as the Discloser of information under this procedure.

7.3 Where the Discloser involves a local trade union representative or work colleague in this procedure, the Discloser will be under an obligation to use all reasonable endeavours to ensure that the representative or work colleague keeps this matter

strictly confidential, as permitted under this procedure, as required by law or until such time as it comes into the public domain.

- 7.4 The Discloser will not be required by the College without his or her consent to participate in any enquiry or investigation into the matter established by the College unless there are grounds to believe that the Discloser may have been involved in misconduct or malpractice.
- 7.5 Where the Discloser participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than on a confidential basis, although the obligations of the Designated Assessor under clause 7.1 of this procedure will remain in relation to the identity of the individual.
- 7.6 Subject to paragraph 8 below, the College will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the Discloser to any detriment, on the grounds of the Discloser's disclosure of information under this procedure. The Discloser should report any complaints of such treatment to a Designated Assessor. If the Discloser wishes the Designated Assessor to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Designated Assessor revealing the Discloser's identity for the purposes of any such action.
- 7.7 All correspondence to the Discloser will be either hand delivered in a sealed envelope by the Assessor or sent to his/her home address.
- 7.8 The Clerk to the Corporation shall keep a register of any disclosures under the policy, which shall be reported annually to the Audit Committee.

## **8. Protection Against Disciplinary Action**

- 8.1 No formal disciplinary action will be taken for making a disclosure but this does not prevent the College from bringing disciplinary action where the College has grounds to believe that a disclosure was made maliciously or vexatiously, or where a disclosure is made outside the College without reasonable grounds.
- 8.2 A worker will not suffer dismissal or any detrimental action or omission of any type (including informal pressure or any form of victimisation) by the College for making a disclosure in accordance with the procedure. Equally, where the worker making the disclosure is threatened, bullied, pressurised or victimised by a colleague for making a disclosure disciplinary action will be taken by the College against the colleague in question.

## **9. Amendments/Review**

- 9.1 This procedure may be amended by the Corporation from time to time and annually.

Date reviewed: 8 December 2020

Version

**1.1**

Responsible officer- Clerk to the Corporation- Parveen Ghulam

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Previously Modified – 3 December 2019

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Related documents

Instrument & Articles

Standing Orders